

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

VIAVI SOLUTIONS INC.,

Case No. 5:20-cv-05501-EJD-SvK

Plaintiff,

STIPULATED PROTECTIVE ORDER

V.

PLATINUM OPTICS TECHNOLOGY INC.,

Defendant.

1. PURPOSES AND LIMITATIONS

12 Disclosure and discovery activity in this action are likely to involve production of
13 confidential, proprietary, or private information for which special protection from public
14 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
15 Accordingly, the parties hereby stipulate to and petition the court to enter the following
16 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
17 protections on all disclosures or responses to discovery and that the protection it affords from
18 public disclosure and use extends only to the limited information or items that are entitled to
19 confidential treatment under the applicable legal principles. The parties further acknowledge, as
20 set forth in Section 13.3, below, that this Stipulated Protective Order does not entitle them to file
21 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
22 followed and the standards that will be applied when a party seeks permission from the court to
23 file material under seal.

24 | 2. DEFINITIONS

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
28 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule

1 of Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
3 well as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that
5 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 2.5 Disclosure or Discovery Material: all items or information, regardless of the
8 medium or manner in which it is generated, stored, or maintained (including, among other things,
9 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
10 responses to discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
12 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
13 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
14 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
15 or of a Party’s competitor.

16 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
17 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
18 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
19 less restrictive means.

20 2.8 House Counsel: attorneys who are employees of a party to this action. House
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
23 entity not named as a Party to this action.

24 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
25 action but are retained to represent or advise a party to this action and have appeared in this
26 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
27 that party.

28 2.11 Party: any party to this action, including all of its officers, directors, employees,

1 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
3 Material in this action.

4 2.13 Professional Vendors: persons or entities that provide litigation support services
5 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
6 organizing, storing, or retrieving data in any form or medium) and their employees and
7 subcontractors.

8 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
9 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only Protected Material
14 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
15 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
17 However, the protections conferred by this Stipulation and Order do not cover the following
18 information: (a) any information that is in the public domain at the time of disclosure to a
19 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
20 a result of publication not involving a violation of this Order, including becoming part of the
21 public record through trial or otherwise; and (b) any information known to the Receiving Party
22 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
23 obtained the information lawfully and under no obligation of confidentiality to the Designating
24 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

25 4. DURATION

26 Even after final disposition of this litigation, the confidentiality obligations imposed by
27 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
28 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all

1 claims and defenses in this action, with or without prejudice; or (2) final judgment herein after
 2 the completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this
 3 action, including the time limits for filing any motions or applications for extension of time
 4 pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

6. 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 7 or Non-Party that designates information or items for protection under this Order must take care
 8 to limit any such designation to specific material that qualifies under the appropriate standards.
 9 To the extent it is practical to do so, the Designating Party must designate for protection only
 10 those parts of material, documents, items, or oral or written communications that qualify – so
 11 that other portions of the material, documents, items, or communications for which protection is
 12 not warranted are not swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 15 unnecessarily encumber or retard the case development process or to impose unnecessary
 16 expenses and burdens on other parties) expose the Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it designated
 18 for protection do not qualify for protection at all or do not qualify for the level of protection
 19 initially asserted, that Designating Party must promptly notify all other parties that it is
 20 withdrawing the mistaken designation.

21. 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 22 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 24 designated before the material is disclosed or produced. Designation in conformity with this
 25 Order requires:

26. (a) for information in documentary form (e.g., paper or electronic documents,
 27 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 28 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY” to each page that contains protected material. If only a portion or portions of the
 2 material on a page qualifies for protection, the Producing Party also must clearly identify the
 3 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
 4 each portion, the level of protection being asserted.

5 A Party or Non-Party that makes original documents or materials available for inspection
 6 need not designate them for protection until after the inspecting Party has indicated which
 7 material it would like copied and produced. During the inspection and before the designation, all
 8 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 9 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 10 copied and produced, the Producing Party must determine which documents, or portions thereof,
 11 qualify for protection under this Order. Then, before producing the specified documents, the
 12 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
 13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
 14 Material. If only a portion or portions of the material on a page qualifies for protection, the
 15 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 16 markings in the margins) and must specify, for each portion, the level of protection being
 17 asserted.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 19 that the Designating Party identify on the record, before the close of the deposition, hearing, or
 20 other proceeding, all protected testimony and specify the level of protection being asserted.
 21 When it is impractical to identify separately each portion of testimony that is entitled to
 22 protection and it appears that substantial portions of the testimony may qualify for protection, the
 23 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding
 24 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
 25 which protection is sought and to specify the level of protection being asserted. Only those
 26 portions of the testimony that are appropriately designated for protection within the 21 days shall
 27 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
 28 Party may specify, at the deposition or up to 21 days afterwards if that period is properly

1 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
 2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
 4 or other proceeding to include Protected Material so that the other parties can ensure that only
 5 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 6 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 7 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Transcripts containing Protected Material shall have an obvious legend on the title page
 10 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 11 pages (including line numbers as appropriate) that have been designated as Protected Material
 12 and the level of protection being asserted by the Designating Party. The Designating Party shall
 13 inform the court reporter of these requirements. Any transcript that is prepared before the
 14 expiration of a 21-day period for designation shall be treated during that period as if it had been
 15 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
 16 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
 17 actually designated.

18 (c) for information produced in some form other than documentary and for
 19 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
 20 the container or containers in which the information or item is stored the legend
 21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a
 22 portion or portions of the information or item warrant protection, the Producing Party, to the
 23 extent practicable, shall identify the protected portion(s) and specify the level of protection being
 24 asserted.

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 26 designate qualified information or items does not, standing alone, waive the Designating Party’s
 27 right to secure protection under this Order for such material. Upon timely correction of a
 28 designation, the Receiving Party must make reasonable efforts to assure that the material is

1 treated in accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 6 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 7 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 8 original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 10 process by providing written notice of each designation it is challenging and describing the basis
 11 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
 12 notice must recite that the challenge to confidentiality is being made in accordance with this
 13 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
 14 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
 15 forms of communication are not sufficient) within 14 days of the date of service of notice. In
 16 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 17 designation was not proper and must give the Designating Party an opportunity to review the
 18 designated material, to reconsider the circumstances, and, if no change in designation is offered,
 19 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
 20 stage of the challenge process only if it has engaged in this meet and confer process first or
 21 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 22 a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 24 intervention, the Parties shall file a joint discovery letter brief in compliance with the procedures
 25 set forth in ¶ 7 of Magistrate Judge van Keulen's Civil and Discovery Referral Matters Standing
 26 Order (June 2020).

27 The burden of persuasion in any such challenge proceeding shall be on the Designating
 28 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose

1 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 2 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 3 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 4 material in question the level of protection to which it is entitled under the Producing Party's
 5 designation until the court rules on the challenge.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed
 8 or produced by another Party or by a Non-Party in connection with this case only for
 9 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
 10 disclosed only to the categories of persons and under the conditions described in this Order.
 11 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 12 section 15 below (FINAL DISPOSITION). Protected Material must be stored and maintained by
 13 a Receiving Party at a location and in a secure manner¹ that ensures that access is limited to the
 14 persons authorized under this Order.

15 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
 16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 17 disclose any information or item designated “CONFIDENTIAL” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 20 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
 21 Bound” that is attached hereto as Exhibit A;

22 (b) the officers, directors, and employees (including House Counsel) of the
 23 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
 26 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment

27 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any
 28 electronic Protected Material in password-protected form.

1 and Agreement to Be Bound" (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial consultants, and
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
5 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
8 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
10 separately bound by the court reporter and may not be disclosed to anyone except as permitted
11 under this Stipulated Protective Order; and

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information.

14 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

15 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
16 Designating Party, a Receiving Party may disclose any information or item designated
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
20 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
21 Bound" that is attached hereto as Exhibit A;

22 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
23 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be
24 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
25 have been followed];

26 (c) the court and its personnel;

27 (d) court reporters and their staff, professional jury or trial consultants, and
28 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who

1 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 (e) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

6 (a) Unless otherwise ordered by the court or agreed to in writing by the
7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
8 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating
10 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
12 (2) sets forth the full name of the Expert and the city and state of his or her primary residence,
13 (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
14 employer(s), (5) identifies each person or entity from whom the Expert has received
15 compensation or funding for work in his or her areas of expertise or to whom the expert has
16 provided professional services, including in connection with a litigation, at any time during the
17 preceding five years, and (6) identifies (by name and number of the case, filing date, and location
18 of court) any litigation in connection with which the Expert has offered expert testimony,
19 including through a declaration, report, or testimony at a deposition or trial, during the preceding
20 five years.

21 (b) A Party that makes a request and provides the information specified in the
22 preceding respective paragraphs may disclose the subject Protected Material to the identified
23 Expert unless, within 14 days of delivering the request, the Party receives a written objection
24 from the Designating Party. Any such objection must set forth in detail the grounds on which it is
25 based.

26 (c) A Party that receives a timely written objection must meet and confer with
27 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
28 agreement within seven days of the written objection. If no agreement is reached, the Parties

1 shall file a joint discovery letter brief in compliance with the procedures set forth in ¶ 7 of
 2 Magistrate Judge van Keulen's Civil and Discovery Referral Matters Standing Order (June
 3 2020).

4 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
 5 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 6 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

7 8. **PROSECUTION BAR**

8 Absent written consent from the Producing Party, any individual who receives access to
 9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information shall not be involved
 10 in the prosecution of patents or patent applications relating to an optical interference filter having
 11 a high refractive index layer that includes hydrogen and silicon, including without limitation the
 12 patents asserted in this action and any patent or application claiming priority to or otherwise
 13 related to the patents asserted in this action, before any foreign or domestic agency, including the
 14 United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,
 15 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting
 16 the scope or maintenance of patent claims. To avoid any doubt, "prosecution" as used in this
 17 paragraph does not include representing a party challenging a patent before a domestic or foreign
 18 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
 19 reexamination). Any counsel who has reviewed information designated HIGHLY CONFIDENTIAL
 20 – ATTORNEYS' EYES ONLY under the Protective Order is permitted to participate in post-grant
 21 proceedings (i.e., patent challenging proceedings) before any domestic or foreign agency (including,
 22 but not limited to, *inter partes* review (IPR), post-grant review, a reissue protest, an opposition before
 23 a foreign agency, *ex parte* reexamination or *inter partes* reexamination), but may not participate in
 24 drafting or amending claims as part of those proceedings. This Prosecution Bar shall begin when
 25 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information is first
 26 received by the affected individual and shall end two (2) years after final termination of this
 27 action.

28

1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a Party is served with a subpoena or a court order issued in another litigation that
4 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
5 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
11 and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
13 Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
17 determination by the court from which the subpoena or order issued, unless the Party has
18 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
19 expense of seeking protection in that court of its confidential material – and nothing in these
20 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

22 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
23 LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-Party in
25 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with
27 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
28 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a
2 Non-Party's confidential information in its possession, and the Party is subject to an agreement
3 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 4 1. promptly notify in writing the Requesting Party and the Non-Party that
5 some or all of the information requested is subject to a confidentiality agreement with a Non-
6 Party;
- 7 2. promptly provide the Non-Party with a copy of the Stipulated Protective
8 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
9 the information requested; and
- 10 3. make the information requested available for inspection by the Non-Party.

11 (c) If the Non-Party fails to object or seek a protective order from this court within 14
12 days of receiving the notice and accompanying information, the Receiving Party may produce
13 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
14 timely seeks a protective order, the Receiving Party shall not produce any information in its
15 possession or control that is subject to the confidentiality agreement with the Non-Party before a
16 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
17 burden and expense of seeking protection in this court of its Protected Material.

18 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
20 Material to any person or in any circumstance not authorized under this Stipulated Protective
21 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
22 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
23 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
24 made of all the terms of this Order, and (d) request such person or persons to execute the
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

26 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
27 MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations of the
 2 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 3 provision is not intended to modify whatever procedure may be established in an e-discovery
 4 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 5 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 6 communication or information covered by the attorney-client privilege or work product
 7 protection, the parties may incorporate their agreement in the stipulated protective order
 8 submitted to the court.

9 13. MISCELLANEOUS

10 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 11 seek its modification by the court in the future.

12 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 13 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 14 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
 15 no Party waives any right to object on any ground to use in evidence of any of the material
 16 covered by this Protective Order.

17 13.3 Filing Protected Material. Without written permission from the Designating Party
 18 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 19 the public record in this action any Protected Material. A Party that seeks to file under seal any
 20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
 21 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
 22 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
 23 request establishing that the Protected Material at issue is privileged, protectable as a trade
 24 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
 25 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then
 26 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
 27 Rule 79-5(e)(2) unless otherwise instructed by the court.

28

14. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 3, 2021

/s/ Frank C. Cimino, Jr.

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2 DATED: February 3, 2021
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17 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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19 DATED: _____
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21 Honorable Edward J. Davila
22 United States District/Magistrate Judge
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